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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916

No. 139

F. DREW CAMINETTI

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI.

J. W. BAILEY,
MARSHALL B. WOODWORTH,
ROBERT T. DEVLIN,
Attorneys for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. .

F. DREW CAMINETTI

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR THE ISSUANCE OF A WRIT OF CERTIORARI REQUIRING THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO CERTIFY TO THE SUPREME COURT OF THE UNITED STATES FOR ITS REVISION AND DETERMINATION THE APPEAL TAKEN BY F. DREW CAMINETTI IN THE ABOVE-ENTITLED CAUSE.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of F. Drew Caminetti respectfully represents:

1. That the petitioner is a citizen of the United States and a resident of the State of California.

2. That petitioner was indicted in the District Court of the United States in and for the Northern District of Cali-

fornia (First Division) for a violation of the act of Congress of June 25, 1910 (36 Stat., 825), known as the "White Slave Traffic Act." The indictment contained four counts.

The first count of the indictment (the only count upon which the defendant was convicted) charged him with having, on the 15th of January, 1913, knowingly, feloniously, and unlawfully transported and caused to be transported, and with having aided and assisted in obtaining transportation for, and in transporting in interstate commerce, one Lola Norris from Sacramento, in the State and Northern District of California, to Reno, in the State of Nevada, over the line of railroad of the Southern Pacific Company, for the purpose of debauchery and for an immoral purpose, to wit, that the said Lola Norris should be and become the concubine and mistress of the defendant Caminetti. (See indictment, Transcript of Record, p. 2.)

The second count charged a similar offense as to one Marsha Warrington, there being, however, this difference: that the immoral purpose alleged was that the said Marsha Warrington should be and become the concubine and mistress not of the defendant Caminetti, but of one Maury I. Diggs.

The third count charged the defendant with having persuaded, induced, and enticed Lola Norris; and count four charged him with having persuaded, induced, and enticed Marsha Warrington, respectively, to go from Sacramento, Cal., to Reno, Nev., for an immoral purpose, to wit, that the said Lola Norris should become the concubine and mistress of the defendant, and the said Marsha Warrington should become the concubine and mistress of one Maury I. Diggs.

The defendant was acquitted on the second, third, and fourth counts and was convicted only on the first count, the jury thus finding, in necessary effect, that the departure from Sacramento, Cal., of Lola Norris and Marsha Warrington with the defendant Caminetti and Maury I.

Diggs was voluntary on their part and not through any persuasion, inducement, or enticement on the part of the defendant.

3. Your petitioner respectfully shows that the court erred in holding that he could be properly convicted of the offense charged against him in the first count of the indictment upon testimony which clearly established that he did not transport Lola Norris in interstate commerce for the purpose of having her become a prostitute or with the intention of deriving any profit from her prostitution or debauchery.

This question was raised by assignments of errors numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 17. (See motion to instruct the jury to acquit; also motion in arrest of judgment, Transcript of Record, pp. 30-33, 45, 46, 47, 48, 412-414.)

4. Your petitioner further shows that the court erred in charging, over the objection of defendant's counsel, the jury as follows:

> "Where a defendant elects to go upon the witness stand and testify, he then subjects himself to the same rule as that applying to any other witness, and if he has failed to deny or explain acts of an incriminating nature that the evidence of the prosecution tends to establish against him, such failure may not only be commented upon, but may be considered by the jury with all the other circumstances in reaching their conclusion as to his guilt or innocence" (Transcript of Record, p. 445).

5. Your petitioner further shows that the court erred in refusing to instruct the jury as to the testimony of accomplices, for Marsha Warrington and Lola Norris, upon whose testimony almost entirely the defendant was convicted, were clearly accomplices, if any crime was committed (Transcript of Record, pp. 99, 446, 449, 450; assignments of error, pp. 155, 156, and 157).

ARGUMENT.

I.

THE WHITE SLAVE TRAFFIC ACT DOES NOT APPLY TO CASES WHICH INVOLVE A MERE IMMORALITY AND HAVE NO ELEMENT OF COMMERCE OR COERCION.

It is not contended by the prosecution that Lola Norris, for whose transportation in interstate commerce petitioner was convicted, was transported against her will or for the purpose of profiting by her prostitution or debauchery. The offense was plainly and only one of fornication or adultery, and the case, therefore, distinctly presents the question of whether the "White Slave Traffic Act" applies, or was intended to apply, to such a state of facts. The testimony of Lola Norris completely negatives the idea of commerce or coercion. She testified as follows:

> "Mr. Caminetti did not, in any of those conversations, propose to me that I should go from Sacramento to Reno for the purpose of having sexual intercourse with him. He never did propose to me that I should go from Sacramento to Reno for the purpose of being his mistress. In any conversation where Mr. Diggs was present, I never heard him say he desired Miss Warrington to go from Sacramento to Reno for the purpose of having sexual intercourse with her. I never heard him say he desired Miss Warrington to go from Sacramenta to Reno for the purpose of having sexual intercourse with her. I never heard him say he desired her to go for the purpose of being his mistress. The subject of sexual intercourse or the subject of being a mistress was never discussed in any of those conversations. Never by anybody" (Transcript of Record, pp. 309, 310).

The testimony of the defendant himself is to the same effect (Transcript of Record, pp. 402-407).

Considering the penalties provided in the "White Slave Traffic Act," this court would not be warranted in holding that it applies to cases of mere immorality, unless the language of it clearly requires such a construction, because it cannot be supposed that any enlightened legislative assembly would declare an act of mere immorality a felony and authorize a court to punish the guilty man (or the guilty woman, for under a recent decision of this court the woman may be as guilty as the man) by an imprisonment for five years and a fine of five thousand dollars. I understand, of course, that if Congress possesses the power to punish an offense, it can prescribe any penalty it chooses, provided only that it stops short of inflicting a cruel or an unusual punishment; but an intention to punish as felonious acts which are mere misdemeanors in practically all of the States cannot be imputed to Congress in the absence of language which clearly imports such an intention.

Without detaining the court with an attempt to analyze the language of the statute, I think its true meaning can be deduced from its last section, which expressly declares that:

> "SEC. 8. That this act shall be known and referred to as the 'White Slave Traffic Act.'"

It is very unusual for Congress to include in any act such a declaration, and there could have been no other purpose in departing from the legislative method of leaving every act to speak for itself, except that Congress desired to indicate the character of offenses which it was denouncing as felonies and for the commission of which it was prescribing such drastic punishment.

If the eighth and last section of the act should leave any doubt in our minds that it was directed only against the interstate transportation of women where an element of white slavery or traffic existed, then I think that doubt will be entirely removed by an examination of the committee report to the House of Representatives recom-

mending the passage of the bill which became the law. I understand, of course, that in construing a law of Congress this court does not consider what was said in debate by individual members of Congress; but a different rule prevails with respect to the title of an act and with respect to the report of a committee, for this court has said in more than one case that it will consider the title of an act and will consult the report of a committee in order to illuminate the meaning of a statute.

Holy Trinity Church *vs.* United States, 143 U. S., 457.

Coosaw Mining Company *vs.* South Carolina, 144 U. S., 536.

Binns *vs.* United States, 194 U. S., 486.

The report made by Representative Mann, who is the author of the "White Slave Traffic Act," and by whose name it is generally known, states the purpose of it so clearly that I venture to quote the following:

> "A material portion of the legislation suggested and proposed is necessary to meet conditions which have arisen within the past few years. The legislation is needed to put a stop to a villainous interstate and international traffic in women and girls. The legislation is not needed or intended as an aid to the States in the exercise of their police powers in the suppression or regulation of immorality in general. It does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution."
>
> * * * * * * *
>
> "Investigations conducted by Government agents disclose the fact that a national and international traffic exists in the buying, selling, and exploitation of women and young girls for immoral purposes. This traffic has come to be known the world over as 'the

white-slave trade.' It is referred to by the Paris conference as 'the trade in white women.' ",

"There are few who really understand the true significance of the term 'white-slave trade.' Most of those who have given only a casual thought to the subject have the impression that women who lead immoral lives in public houses are there voluntarily, either because they are attracted by the excitement of such a life or because they have found it an easy way to earn a living. In many cases such is not the fact. The result of careful investigation into this subject discloses the fact that the inmates of many houses of ill-fame are made up largely of women and girls whose original entry into a life of immorality was brought about by men who are in the business of procuring women for that purpose—men whose sole means of livelihood is the money received from the sale and exploitation of women who, by means of force and restraint, compel their victims to practice prostitution. These investigations have disclosed the further fact that these women are practically slaves in the true sense of the word; that many of them are kept in houses of ill-fame against their will; and that force, if necessary, is used to deprive them of their liberty."

"The characteristic which distinguishes 'the white-slave trade' from immorality in general is that the women who are the victims of the traffic are unwillingly forced to practice prostitution. The term 'white slave' includes only those women and girls who are literally slaves—those women who are owned and held as property and chattels—whose lives are lives of involuntary servitude; those who practice prostitution as a result of the activities of the procurer, and who, for a considerable period at least, continue to lead their degraded lives because of the power exercised over them by their owners. In short, the white-slave trade may be said to be the business of securing white women and girls and of selling them outright, or of exploiting them for immoral purposes."

II.

IF THE "WHITE SLAVE TRAFFIC ACT" APPLIES, AND WAS INTENDED TO APPLY, TO CASES WHICH ARE FREE FROM COMMERCE OR COERCION AND INVOLVE NO MORE THAN FORNICATION OR ADULTERY, THEN IT IS VOID, BECAUSE IT IS NOT WITHIN THE CONSTITUTIONAL POWER OF CONGRESS TO PROHIBIT AND PUNISH SUCH ACTS.

I do not doubt the power of Congress to prohibit interstate traffic in prostitutes any more than I doubt the power of Congress to prohibit the interstate shipment of diseased meat; but that power is derived from the commerce clause of the Constitution and cannot be exercised except in the regulation of commerce. If men are base enough to traffic in the bodies of women, then such traffic is undoubtedly commerce as much as the traffic in articles of manufacture or agriculture, and is equally subject to the power of Congress; but immorality is not commerce, and no matter how much we may abhor moral delinquency it is subject to State, and not to Federal, control.

I am not unmindful that this court has held that Congress, under the commerce clause of the Constitution, may regulate the interstate transportation of persons, and I do not challenge the soundness of that holding. I accept the view that commerce includes more than traffic, extending to instrumentalities and to intercourse; but those expressions must be construed as relating to commerce. Conceding that under its power to regulate commerce Congress can prescribe the charges for transportation and regulate the carrier in other ways, and can even control the passengers themselves to an extent, those regulations, in order to be valid, must still be regulations of commerce and not regulations of personal conduct which does not interfere with commerce and is objectionable only for its immorality.

III.

While it is true that an accused person who voluntarily takes the stand may be subjected to a cross-examination as other witnesses, and certainly as to the matters upon which he has testified on direct examination, it was a reversible error for the court to charge the jury in this case that they had a right to consider "the defendant's failure to deny or explain acts of an incriminating nature that the evidence of the prosecution tended to establish against him."

I shall not burden the court with an argument on that question, because I think it is sufficient to say that the Circuit Court of Appeals for the Ninth Circuit has, in the case under consideration, decided it one way, while the Circuit Court of Appeals for the First Circuit, Myrick *vs.* U. S., 219 Fed., 1, and the Circuit Court of Appeals for the Eighth Circuit, Balliet *vs.* U. S., 129 Fed., 689, have decided it another way, and this conflict on a question involving a constitutional right is sufficient to warrant this court in granting a writ of certiorari in order to remove the conflict between those Circuit Courts of Appeals, even if there were no other question in the case.

Conclusion.

All of the foregoing considered, your petitioner respectfully prays that a writ of certiorari shall be issued, as provided by law and by the rules of this honorable court, directed to the Circuit Court of Appeals for the Ninth Circuit, and commanding said court to certify and send to this court a complete transcript of the record in this case, to the end that the said case may be reviewed and the judgment reversed.

Respectfully submitted,

J. W. BAILEY,
MARSHALL B. WOODWORTH,
ROBERT T. DEVLIN,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA,
City of Washington, ss:

I hereby certify that I have examined the foregoing petition for a writ of certiorari and believe that it is well founded, and that it is not presented for the purpose of delay.

J. W. BAILEY,
Attorney for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. —.

F. DREW CAMINETTI
vs.
THE UNITED STATES OF AMERICA.

Hon. JOHN W. DAVIS,
Solicitor General of the United States:

Notice is hereby given that we shall, on Tuesday, the 1st day of June, A. D. 1915, at the opening of court on that day, or as soon thereafter as counsel can be heard, submit the petition, copy of which is hereby served upon you, to the Supreme Court of the United States.

J. W. BAILEY,
MARSHALL B. WOODWORTH,
ROBERT T. DEVLIN,
Attorneys for Petitioner.

Service accepted this..... day of May, A. D. 1915.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. [redacted] 139

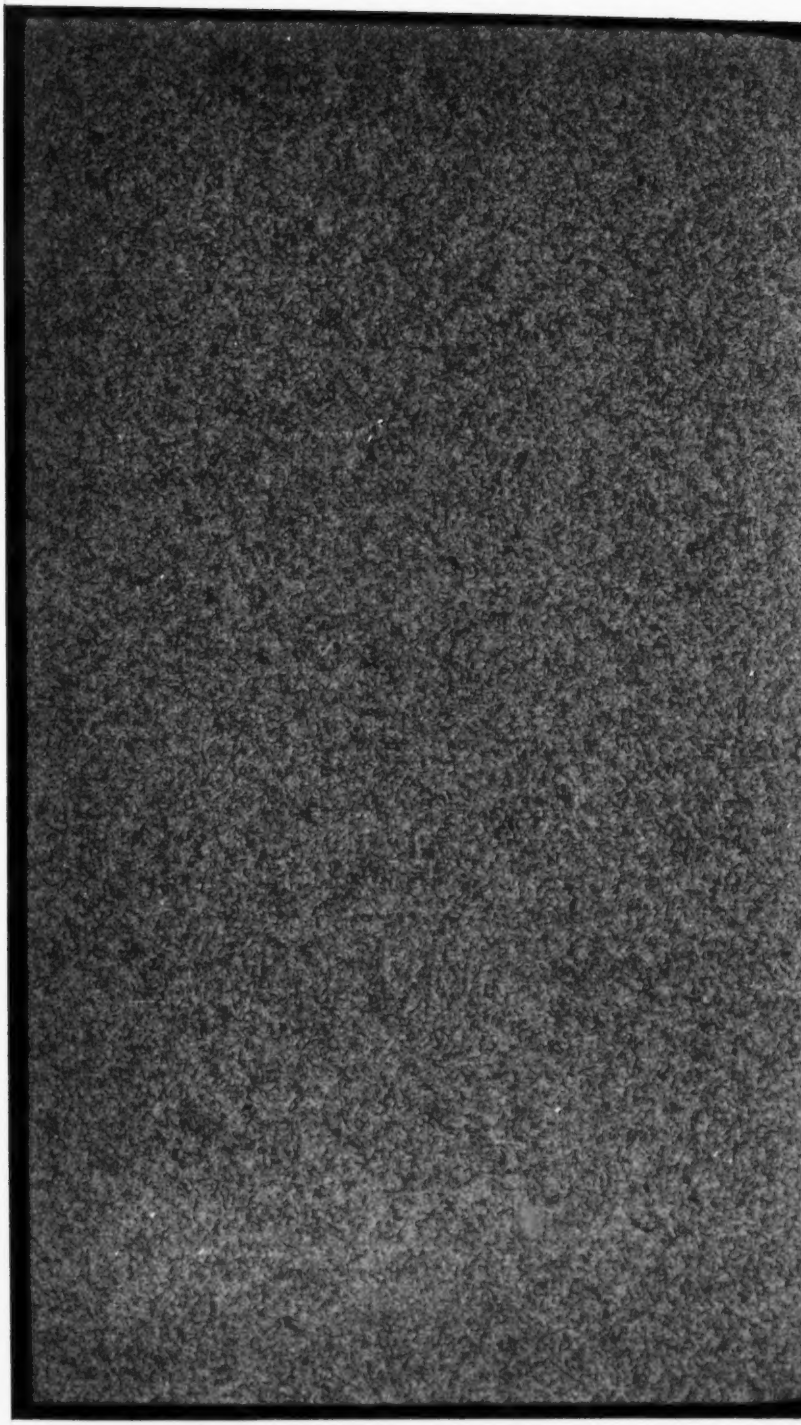
F. DREW CAMERETTI

v.

THE UNITED STATES OF AMERICA.

MOTION FOR A REHEARING.

J. W. BAILEY,
Attorney for Petitioner.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 1008.

F. DREW CAMINETTI, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

MOTION FOR A REHEARING.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully prays that this honorable court will reconsider its action denying his application for a writ of certiorari and grant the same for the following reasons:

1. Unless and until this court decides whether the "White Slave Traffic Act" applies to cases which involve a mere immorality, without any element of commerce or coercion, there cannot be any uniform enforcement of that law; because in some districts the United States attorneys, holding that the law applies to such cases, prosecute them, while in other districts the United States attorneys, under a

different view of the law, refuse to prosecute cases except where there is commerce or coercion. The Department of Justice has heretofore specifically expressed the opinion that cases involving no element of commerce are not within the law, and approved a refusal to prosecute a case of mere immorality, as will appear from the following correspondence between the Hon. George W. Wickersham and the Hon. Charles C. Houpt:

"DEPARTMENT OF JUSTICE,
"OFFICE OF UNITED STATES ATTORNEY,
"DISTRICT OF MINNESOTA,
"ST. PAUL, July 7, 1912.

"THE ATTORNEY GENERAL,
"*Washington, D. C.*

"SIR: I have the honor to submit for your direction and advice the facts in a case which is claimed to come within the purview of the Act of June 25, 1910, called the 'White Slave Traffic Act.'

"One Ada Cox, twenty-four years of age, residing at Chicago, Ill., came to St. Paul in October, 1910, at the solicitation and expense of one Rufas Edwards. On her arrival here, Edwards met her at the station. They passed the day riding, lunching and drinking, and the night following at a house of assignation in the city of Minneapolis. She remained there three days with Edwards and then returned to Chicago. In June, 1911, she repeated the visit under like circumstances.

"June 12, 1912, Miss Cox applied to me for a warrant of arrest of Edwards under the above-named act. At that time she made a statement of her connection with Edwards which was taken in shorthand by Mr. J. M. Dickey, Assistant United States Attorney, in his office, and by him written out.

"A copy of this statement is enclosed.

"Careful consideration of the facts and circumstances as related by Miss Cox fail to convince me that her case came within the spirit and intent of the Mann Act. *The element of traffic is entirely absent from this transaction.* It is not a case of

prostitution or debauchery and the general words 'or other immoral practice,' should be qualified by the particular preceding words and be read in the light of the rule of *Ejusdem Generis*. This view of the statute is the more reasonable when considered in connection with section 8 where Congress employs the terms 'slave' and 'traffic' as indicative of its purpose to suppress certain forms of abominable practices connected with the degradation of women for gain.

"Since I have hesitated about having a warrant issued for the arrest of Edwards, Miss Cox has *enlisted certain club women in her behalf who are insisting on the arrest being made.*

"As this case is typical of many others that are liable to be brought to this office I deemed it proper to submit the facts to ascertain if my interpretation of the statute is in harmony with the departmental construction.

"Very respectfully yours,

"(Signed) CHAS. C. HOUPT,
"United States Attorney."

"DEPARTMENT OF JUSTICE,
"WASHINGTON, D. C., July 23, 1912.

"UNITED STATES ATTORNEY,
St. Paul Minn.:

"I have received your letter of the 17th instant concerning a statement of the facts with reference to the complaint of one Ada Cox, against one Rufas Edwards of an alleged violation of the White Slave Traffic Act.

"I agree with your conclusion that the facts and circumstances set forth in your letter and its enclosures do not bring the matter within the true intent of the White Slave Traffic Act, and that no prosecution against Edwards should be instituted in the Federal courts unless other and different facts are presented to you.

"Respectfully,

"(Signed) GEO. W. WICKERSHAM,
"Attorney General."

2. It is held by some district courts of the United States that the law applies to cases involving acts of mere immorality, while in other district courts of the United States it is held that the law applies only to cases in which there is an element of commerce or coercion.

3. It is inconceivable that Congress would include acts of mere immorality in a law the purpose of which was to punish the infamous and degrading business of trafficking in the bodies of women. The offenses are so different that it cannot be fairly assumed that Congress intended to classify the man who commits a mere moral delinquency with the man who engages in the sale of women for the sake of profit. Nor can it be assumed that Congress intended to subject the man who commits a sin to the same punishment as the man who commits a crime.

4. It could not be that Congress intended to punish an act of mere immorality in the manner provided by the "White Slave Traffic Act," because to assume that is to impute to Congress a disregard of that fundamental principle of criminal jurisprudence which admonishes legislators always to apportion punishments according to the gravity of offenses.

5. Any law which condemns a young man who commits an indiscretion to carry through life the brand of a felon, and inflicts upon his family the disgrace of his penitentiary service, is a reproach to our civilization, and no law of Congress should be construed to require such a punishment for such an act, unless its language does not admit of any other construction.

I know that this court never decides any question without a due consideration, and I also know that, after having given a question due consideration, it is not probable that any

reason so controlling as to induce a reversal of its judgment can be advanced on a motion for a rehearing. I venture to believe, however, that a decision on the question as to whether this "White Slave Traffic Act" applies to cases of a mere immorality is so important as to justify me in urging upon this court a second time to grant this petition for a writ of certiorari.

In no way, except through the judgment of this court, can the doubt which exists in the minds of the bar, or the differences which exist between the judges and prosecuting attorneys, be removed. With a decision by this court, whether it shall be one way or the other, the law will be uniformly and impartially enforced in every jurisdiction, thus rescuing our system from the reproach that what is a crime in one district may not be a crime in an adjoining district. With the question authoritatively decided by this court, then the prohibitions and penalties of the law will be understood and applied in all places and to all men alike. Surely to accomplish such a result is a sufficient reason for granting this petition for a writ of certiorari.

Respectfully submitted,

J. W. BAILEY,
Attorney for Petitioner.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

F. DREW CAMINETTI, PETITIONER,
v.
THE UNITED STATES. } No. 480.

MAURY I. DIGGS, PETITIONER,
v.
THE UNITED STATES. } No. 510.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and moves the court to advance the above-entitled causes for joint hearing on a day convenient to the court at the next term.

Petitioners were convicted in the District Court of the United States for the Northern District of California, upon separate indictments and at separate trials, of violating the "White-Slave Traffic Act," 36 Stat. 825. Petitioner Caminetti was sentenced to eighteen months' imprisonment and to pay a fine of $1,500; petitioner Diggs was sentenced to two years' imprisonment and to pay a fine of $2,000. Separate

writs of error were sued out from the Circuit Court of Appeals for the Ninth Circuit, which affirmed the judgment of the District Court (220 Fed. 545, 584). The cases are here upon writs of *certiorari* allowed by this court during the latter part of the last term, and petitioners are now at large on bail.

The cases arise out of the same transaction, involve similar questions, and for that reason were disposed of by the Circuit Court of Appeals for the Ninth Circuit in a single opinion, one of the concurring judges, however, subsequently filing a special concurring opinion. Upon certain matters involved there is a conflict of decision between different Circuit Courts of Appeals, and for that reason an early determination of the same by this court is desirable.

Notice of this motion has been served on opposing counsel.

JOHN W. DAVIS,
Solicitor General.

APRIL, 1916.

O

House Calendar No. 11.

61st Congress, 2d Session. HOUSE OF REPRESENTATIVES. Report No. 47.

WHITE SLAVE TRAFFIC.

DECEMBER 21, 1909.—Referred to the House Calendar and ordered to be printed.

Mr. MANN, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT.

[To accompany H. R. 12315.]

The Committee on Interstate and Foreign Commerce, to which was referred the bill (H. R. 12315) to regulate and prevent the transportation in interstate and foreign commerce of alien women and girls for immoral purposes, and for other purposes, begs leave to report the bill back, with sundry amendments, with a recommendation that the amendments be agreed to and the bill as amended do pass.

The following amendments to the bill are recommended:

On page 2, line 9, strike out the words "or evidence of the right to" and insert after the word "transportation," in line 10, the words "or evidence of the right thereto."

On page 5, in line 7, after the word "procuration" insert the word "of."

On page 6, in line 16, strike out the word "and" and insert the word "or."

On page 7, lines 2 and 3, strike out the word "conclusively." Page 7, in line 7, after the word "include" insert the words "the District of Alaska." Page 7, line 9, strike out the word "impart" and insert in lieu thereof the word "import."

Amend the title so that it will read as follows: "A bill to further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls, and for other purposes."

POLICE POWERS OF THE STATES NOT INTERFERED WITH.

It is not the purpose of the bill to interfere with or usurp in any way the police powers of the States. The bill reported does not endeavor to regulate, prohibit, or punish, prostitution or the keeping of places where prostitution is indulged in. The prohibition of prostitution and other immoral practices and the punishment of the practice of prostitution or the keeping of houses of ill-fame, or other

immoral places, in the several States, are matters wholly within the powers of the States and the Federal Government has no jurisdiction over those subjects. On the other hand, it has been shown in the investigation relating to the "white slave traffic" that persons engaged in that business in some of the large cities felt quite free to engage in the traffic as between the States, when they hesitated about engaging in the traffic wholly confined to one State.

PROVISIONS OF THE BILL.

Most of the provisions of the bill are based upon the power of Congress over interstate and foreign commerce. In the second section of the bill it is made a crime for anyone to knowingly transport in interstate or foreign commerce any woman or girl for the purpose of prostitution, or for the purpose of inducing, enticing, or compelling a woman to become a prostitute; and in the same section it is also made a crime for anyone to knowingly procure a ticket to be used by a woman in interstate or foreign commerce going to a place for the purpose of prostitution, whereby such woman shall be actually transported in interstate or foreign commerce, or in any Territory, or the District of Columbia.

Section 3 of the bill makes it a crime for any person to knowingly persuade, induce, entice, or coerce any woman or girl to go from one State to another for the purpose of prostitution, and who shall thereby knowingly cause such woman to go or be transported as a passenger upon the line of any common carrier in interstate or foreign commerce.

Section 4 applies only to a girl under the age of 18 years, and is practically the same as section 3, except that it makes a higher penalty apply to the crime of leading a girl under 18 to become a prostitute and transporting her in interstate commerce for that purpose. The provisions of section 2 of the bill make the crime, first, to knowingly transport, and, second, to knowingly furnish a passenger ticket for transportation for the purpose of prostitution, when accompanied by the use of such ticket in interstate or foreign commerce. Section 3 makes the crime to knowingly persuade, induce, entice, or coerce a woman into prostitution, and thereby cause her to go and to be carried or transported as a passenger in interstate or foreign commerce.

DISTRICT OF COLUMBIA AND THE TERRITORIES.

All of the provisions which make the crime depend upon transportation in interstate or foreign commerce are made applicable to the District of Columbia, the Territories and possessions of the United States, including the Panama Canal Zone, without regard to the crossing of district, territorial, or state lines, and apply within the territories to the same extent as they apply in cases outside of the territories in interstate or foreign commerce.

PENALTIES.

The penalties provided by the bill are a fine of not more than $5,000 and imprisonment for not more than five years, except that the penalty where the girl is under 18 years of ago is not to exceed

$10,000 fine and imprisonment not to exceed ten years; and it is provided that prosecution may be in any district where the violation was committed, or from, through, or into which the woman is carried contrary to the provisions of law.

INTERNATIONAL AGREEMENT.

Section 6 of the bill is based in part upon the right of Congress to regulate foreign commerce and in part upon the right to legislate in furtherance of an international treaty. The United States in 1908 became a party to an international agreement for the suppression of the white slave traffic, and section 6 makes certain provisions to aid in carrying out by the United States the international agreement. It provides that the Commissioner-General of Immigration is designated to receive and centralize information concerning the procuration of alien women with a view to their debauchery, to receive their declarations, establish their identity, ascertain from them who induced them to leave their native countries, and to exercise supervision over them. It also provides that every person who shall knowingly keep or harbor in any house of prostitution any alien woman within three years after she shall have entered the United States shall file with the Commissioner-General of Immigration a statement concerning such woman, and if such keeper shall fail to file such statement within thirty days then he shall be guilty of a misdemeanor and subject to $2,000 fine and two years' imprisonment. If the keeper furnishes the statement, the woman under the immigration law will be deported in accordance with existing law. If the keeper fails to furnish the statement, the keeper will be punished.

AS TO THE VALIDITY OF THE PROPOSED ACT.

A careful examination of the Constitution, the authorities, and the decided cases seem to show that the provisions of the bill, dependent upon the commerce clause of the Constitution, come within the power of Congress and are constitutional.

It is no longer open to question that the transit of individuals from State to State is interstate commerce. The statement in Mayor *v.* Miln (11 Pet., 102) that persons are not the subject of commerce was overruled in the Passenger Cases (7 How., 429, 432, 436) in the opinion of Justice Wayne, holding that the statement to that effect in the Miln case was dictum and was not adopted by the majority of the court. (See further, Mobile County *v.* Kimball, 102 U. S., 692; Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S., 196; Pickard *v.* Pullman Southern Car Co., 117 U. S., 34; Covington & C. Bridge Co. *v* Kentucky, 154 U. S., 204.) Indeed the mere transit of persons arriving at our ports of entry is without reference to traffic the subject of congressional regulation, because it is commerce. (Head Money Cases, 112 U. S., 580; Nishimura Ekiu *v.* U. S., 142 U. S., 651.) The same must be true of the transit of persons from State to State, assuming that foreign commerce is the same as interstate commerce, with the exception of the locus in quo.

Congress, therefore, having the power to regulate the transportation of persons in interstate commerce, it remains to be considered whether or not the proposed regulation is concerning a matter directly connected with interstate commerce or only remotely connected with it.

In determining this the same tests are applicable as those which are pertinent in considering the transportation of property in interstate commerce. As stated in The Lottery cases, 188 U. S., 321, 357:

> As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries" and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another. In legislating upon the subject of the traffic in lottery tickets, as carried on through interstate commerce, Congress only supplemented the action of those States—perhaps all of them—which, for the protection of the public morals, prohibit the drawing of lotteries, as well as the sale or circulation of lottery tickets, within their respective limits. It is said, in effect, that it would not permit the declared policy of the States, which sought to protect their people against the mischiefs of the lottery business, to be overthrown or disregarded by the agency of interstate commerce. We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, can not be met and crushed by the only power competent to that end. We say competent to that end, because Congress alone has the power to occupy, by legislation, the whole field of interstate commerce. What was said by this court upon a former occasion may well be here repeated: "The framers of the Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject-matter specifically committed to its charge." (*In re Rahrer*, 140 U. S., 545, 562.) If the carrying of lottery tickets from one State to another be interstate commerce, and if Congress is of opinion that an effective regulation for the suppression of lotteries, carried on through such commerce, is to make it a criminal offense to cause lottery tickets to be carried from one State to another, we know of no authority in the courts to hold that the means thus devised are not appropriate and necessary to protect the country at large against a species of interstate commerce which, although in general use and somewhat favored in both national and state legislation in the early history of the country, has grown into disrepute, and has become offensive to the entire people of the nation. It is a kind of traffic which no one can be entitled to pursue as of right.

Certainly in the case of lotteries there is nothing harmful in the mere transportation of the pieces of paper. The injury resulted from the connection which existed between those tickets and the entire scheme of the lottery. It was the purpose for which the tickets were used which made them an instrument of injury to the public.

The sections above proposed have been so drawn that they are limited to cases in which there is the act of transportation in interstate commerce of women for purposes of prostitution. The use of interstate commerce in sending prostitutes from one State to another in connection with this traffic in women would seem to be as directly connected with interstate commerce as the sending of tickets from one State to another in furtherance of the operation of a lottery. It is true the act of prostitution is not committed in connection with the interstate transportation nor was the drawing in connection with the lottery a part of interstate commerce.

The sections proposed do not amount to an interference with the police power of the State. The simple test, as pointed out in the Rahrer case and in the Lottery cases, is whether or not the State, in the exercise of its police power, could have prohibited the things at which the act is aimed. Manifestly a State could not enact that a person who induced a woman to go from one State to another for purposes of prostitution should not aid or assist in her transportation from one State to another, or that the common carrier should not transport the prostitute. To do so would be a plain attempt to regulate interstate commerce. (Leisy *v.* Hardin, 135 U. S., 100.) Where the subject upon which Congress can act in the exercise of the power to regulate commerce is local in its nature or sphere of

operation, such as harbor pilotage, the construction of bridges over navigable rivers, the erection of wharves, piers, and docks, which properly can be regulated only by special provision adapted to their localities, the State can act until Congress interferes and supersedes its authority. Where, however, the subject is national in its character, and demands and requires uniform regulation, and affects all the States, such as transportation between the States, including the importation from one State to another, Congress alone can act on it and provide the needed regulation. (Bowman *v.* Chicago & N. W. R. Co., 125 U. S., 465, 507.)

The rule just stated with reference to the transportation of property of course applies to the transportation of persons. The subject-matter of the legislation being, therefore, one over which the States have no control, it must be, as pointed out above, within the domain of proper federal legislation.

HISTORY OF THE DEVELOPMENT OF THE LAW.

The history of the development of the law forbidding the importation of alien women for purposes of prostitution is as follows:

The first provision relating to this subject was contained in the act of March 3, 1875 (18 Stat. L., 477; also 1 U. S. Comp. Stat., pp. 1286–1287), as follows:

> SEC. 3. That the importation into the United States of women for the purposes of prostitution is hereby forbidden; and all contracts and agreements in relation thereto, made in advance or in pursuance of such illegal importation and purposes, are hereby declared void; and whoever shall knowingly and willfully import, or cause any importation of, women into the United States for the purposes of prostitution, or shall knowingly or willfully hold, or attempt to hold, any woman to such purposes, in pursuance of such illegal importation and contract or agreement, shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned not exceeding five years and pay a fine not exceeding five thousand dollars.

Section 5 of the same act also contained the following:

> That it shall be unlawful for aliens of the following classes to immigrate into the United States, namely, * * * women "imported for the purposes of prostitution."

The foregoing provision was superseded by section 3 of the act of March 3, 1903, entitled "An act to regulate the immigration of aliens into the United States" (32 Stat. L., 1213; also 1905 Suppl. to U. S. Comp. Stat., p. 276), which provides as follows:

> That the importation into the United States of any woman or girl for the purposes of prostitution is hereby forbidden; and whoever shall import or attempt to import any woman or girl into the United States for the purposes of prostitution, or shall hold or attempt to hold, any woman or girl for such purposes in pursuance of such illegal importation shall be deemed guilty of a felony, and, on conviction thereof, shall be imprisoned not less than one nor more than five years and pay a fine not exceeding five thousand dollars.

It is to be observed that the provision in question underwent several important changes in the reenactment, as follows:

First. The old act covered the importation only of "any woman." The new act was extended to cover "any woman or girl."

Second. The clause in the old act declaring void contracts or agreements in relation to importing women for the purposes of prostitution was omitted in the new act.

Third. The old act used the language "knowingly and willfully" import and "knowingly and willfully" hold, or attempt to hold, any

person, in pursuance of such illegal importation, etc. The new act eliminated the "knowingly and willfully" and made it an offense to import or to hold or attempt to hold any person in pursuance of such illegal importation.

Fourth. The penalty in each act was the same.

Both of the foregoing provisions were superseded by the act of February 20, 1907, entitled "An act to regulate the immigration of aliens into the United States" (34 Stat. L., 898; 1907 Suppl. U. S. Comp. Stat., 392), as follows:

SEC. 3. That the importation into the United States of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars; and any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this act.

The changes introduced into the new provision, worthy of note, are as follows:

First. The new law forbade the importation of any alien woman or girl for the purpose of prostitution, and added the clause "or for any other immoral purpose."

Second. The new law added the words "directly or indirectly" in the clause "and whoever shall, directly or indirectly, import, or attempt to import," etc.

Third. The new law added the following important and also absolutely new provision: "Or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States."

Fourth. The new law added to the section express authorization for the deportation of any alien woman or girl, in the following language:

Any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this act.

SUPREME COURT DECISION CONSTRUING SECTION 3 OF THE ACT OF FEBRUARY 20, 1907.

Section 3 of the act of February 20, 1907, has received the consideration of the Supreme Court in two cases.

In the first case, that of the United States *v.* John Bitty (208 U. S., 393), the Supreme Court held that a foreign woman being brought to the United States as the personal, private mistress of a man living here was being imported "for other immoral purposes," and that, therefore, the importer was subject to the penalty of the statute and the woman to deportation.

This decision is not pertinent to the phase of the subject under discussion, and is mentioned only in passing.

The second case was that of Joseph Keller *v.* United States (213 U. S., 138). In the Keller case the Supreme Court was called to pass squarely upon the constitutionality of that portion of the provision in question which made it an offense to harbor or maintain for the purposes of prostitution any alien woman or girl within three years of her entry into the United States. The exact language of the provision in question is as follows:

> Or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony, etc.

The opinion of the court (attached hereto as Appendix C) was delivered by Mr. Justice Brewer. Mr. Justice Holmes delivered a dissenting opinion (attached hereto as Appendix D), which was concurred in by Justices Harlan and Moody.

The case was a typical case of "harboring" exclusively. The uncontradicted testimony was to the effect that the woman, Irene Bodi, came to this country in November, 1905; that she remained in New York until October, 1907; then came to Chicago and went into a house of prostitution at South Chicago, which the defendants purchased in November, 1907, finding the woman then in the house; that she had been in the business of a prostitute for only a few months prior to the trial of the case, in October, 1908, and that the defendants did not know her until November, 1907.

The question of the power of Congress to enact a law for the punishment of anyone "harboring" an alien woman within three years of her arrival, regardless of whether or not she was a prostitute voluntarily or had entered that state against her will, was squarely presented by the facts in the case. The court held that Congress was without power to pass such a law, its position appearing from the statement contained in the following paragraph from the opinion of the court:

> While the keeping of a house of ill fame is offensive to the moral sense, yet that fact must not close the eye to the question whether the power to punish therefor is delegated to Congress or is reserved to the State. Jurisdiction over such an offense comes within the accepted definition of the police power. Speaking generally, that power is reserved to the States, for there is in the Constitution no grant thereof to Congress.

Bearing in mind the facts in this case—namely, that so far as appeared in the case presented, the defendants had nothing whatever to do with the importation of the woman in question; that so far as they were concerned she was not in a house of ill fame against her will; and that she was an inmate of the house when the establishment was purchased as a going concern—the following suggestions of the court contained in the opinion with reference to the conclusion the court might have reached had the facts been different, are important: For instance, the court says, page 144:

> It is unnecessary to determine how far Congress may go in legislating with respect to the conduct of an alien while residing here, for there is no charge against one; nor to prescribe the extent of its power in punishing wrongs done to an alien, for there is neither charge nor proof of any such wrong. So far as the statute or the indictment requires, or the testimony shows, she was voluntarily living the life of a prostitute, and was only furnished a place by the defendants to follow her degraded life.

See also on page 147, the court says:

The question is, therefore, whether there is any authority conferred upon Congress by which this particular portion of the statute can be sustained. By section 2 of article 2 of the Constitution power is given to the President, by and with the advice and consent of the Senate, to make treaties, but there is no suggestion in the record or in the briefs of a treaty with the King of Hungary under which this legislation can be supported.

The Government stated in its brief these two propositions:

The clause in question should be held valid because it relates to and materially affects the conditions upon which an alien female may be permitted to remain in this country, and the grounds which warrant her exclusion. * * *

The validity of the provision in question should be determined from its general effect upon the importation and exclusion of aliens.

The court then, without stating whether or not either of these propositions was well taken, dismissed them with the statement that "the act charged has no significance in either direction."

In considering the decision of the Supreme Court in the Keller case attention is especially called to the fact that in the opinion the court made the following suggestions:

By section 2 of article 2, of the Constitution, power is given to the President, by and with the advice and consent of the Senate, to make treaties, but there is no suggestion in the record or in the briefs of a treaty with the King of Hungary under which this legislation can be supported.

It is manifest that this is a most pregnant suggestion. A showing that the legislation in question was supported by a treaty could not be made at that time, however, for the reason that at the time of the enactment of the legislation the United States was not a party to the international agreement covering the subject. In fact, this Government did not adhere to the international agreement until a date subsequent to the commission of the offense charged against Keller.

In this connection the chronology of events is important. The existing statute on the subject of the importation of alien women for immoral purposes is contained in section 3 of the act approved February 20, 1907. The alleged illegal act of which the defendant stood convicted was the harboring of an alien woman on June 1, 1908. The United States did not become a party to the international agreement for the repression of the trade in white women until June 15, 1908, at which time this Government adhered to the agreement by virtue of a proclamation issued by President Roosevelt. It appears, therefore, that the statute in question became a law, and the offense involved was committed, previous to the date on which this Government became a party to the international agreement.

So far Congress has not enacted legislation to insure the carrying out of the provisions of the treaty in question.

The following clearly appears from an analysis of the Supreme Court decision above mentioned:

First. That Congress may properly enact legislation affecting the conduct of an alien while residing here for a period of at least two or three years after the alien's arrival.

Second. That Congress may provide for the punishment of wrongs done to an alien during the probationary period—that is to say, the Supreme Court intimates very broadly that Congress has the power to enact a law making it an offense to "harbor" for immoral purposes, by force or against her will, an alien woman or girl within the limited period referred to.

Third. That in the carrying out of a treaty obligation Congress has the authority to pass an act making it an offense to harbor an alien woman or girl for immoral purposes, even in the absence of a showing that force or restraint is used—that is to say, in the decision above referred to the Supreme Court suggests that a different conclusion might have been reached under the very clause then under consideration had it appeared that the provision in question was the carrying out of a treaty agreement.

EXISTING LAWS.

Section 3 of the act of February 20, 1907 (34 Stat., 899; also 1907 Suppl. U. S. Comp. Stat., p. 392), is as follows:

NOTE.—The italic portion of the following section is the portion which was held unconstitutional by the Supreme Court in the Keller case:

That the importation into the United States of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, *or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose any alien woman or girl, within three years after she shall have entered the United States*, shall, in every such case, be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars; and any alien woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this act.

Section 2 of the same act provides as follows:

That the following classes of aliens shall be excluded from admission into the United States; * * * prostitutes, or women or girls coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who procure or attempt to bring in prostitutes or women or girls for the purpose of prostitution or for any other immoral purpose; * * *.

"THE WHITE SLAVE TRADE."

A material portion of the legislation suggested and proposed is necessary to meet conditions which have arisen within the past few years. The legislation is needed to put a stop to a villainous interstate and international traffic in women and girls. The legislation is not needed or intended as an aid to the States in the exercise of their police powers in the suppression or regulation of immorality in general. It does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution.

The evil, as a present day existing evil of widespread dimensions which has arisen, has been given careful attention by the representatives of most of the civilized nations of the world, and has been made the subject of an international agreement. Thousands of public-spirited citizens have combined in various national and State organizations for the purpose of lending their aid in its suppression. The white-slave trade has been so prevalent that prosecuting officers,

both state and federal, even under inadequate and insufficient laws, have been able to secure many notable convictions. It is an evil which many state legislatures have attempted to regulate within the past two or three years by means of the enactment of state statutes. Inasmuch, however, as the traffic involves mainly the transportation of women and girls from the country districts to the centers of population and their importation from foreign nations the evil is one which can not be met comprehensively and effectively otherwise than by the enactment of federal laws.

Investigations conducted by government agents disclose the fact that a national and international traffic exists in the buying, selling, and exploitation of women and young girls for immoral purposes. This traffic has come to be known the world over as "the white-slave trade." It is referred to by the Paris conference as "the trade in white women."

There are few who really understand the true significance of the term "white-slave trade." Most of those who have given only a casual thought to the subject have the impression that women who lead immoral lives in public houses are there voluntarily, either because they are attracted by the excitement of such a life or because they have found it an easy way of earning a living. In many cases such is not the fact. The results of careful investigation into this subject disclose the fact that the inmates of many houses of ill fame are made up largely of women and girls whose original entry into a life of immorality was brought about by men who are in the business of procuring women for that purpose—men whose sole means of livelihood is the money received from the sale and exploitation of women who, by means of force and restraint, compel their victims to practice prostitution. These investigations have disclosed the further fact that these women are practically slaves in the true sense of the word; that many of them are kept in houses of ill fame against their will; and that force, if necessary, is used to deprive them of their liberty.

The characteristic which distinguishes "the white-slave trade" from immorality in general is that the women who are the victims of the traffic are unwillingly forced to practice prostitution. The term "white slave" includes only those women and girls who are literally slaves—those women who are owned and held as property and chattels—whose lives are lives of involuntary servitude; those who practice prostitution as a result of the activities of the procurer, and who, for a considerable period at least, continue to lead their degraded lives because of the power exercised over them by their owners. In short, the white-slave trade may be said to be the business of securing white women and girls and of selling them outright, or of exploiting them for immoral purposes. Its victims are those women and girls who, if given a fair chance, would, in all human probablility, have been good wives and mothers and useful citizens.

The preamble of an existing international agreement on this subject states that the several governments

being desirous to assure to women who have attained their majority and are subjected to deception or constraint, as well as minor women and girls, and efficacious protection against the criminal traffic known under the name of trade in white women ("traite des blanches"), have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose.

It is the purpose of the proposed laws, in so far as it may be possible for Congress to do so, to protect women and girls against this criminal traffic by providing for the punishment of those engaged in that traffic and by regulations established by the act.

Extensive investigation by government commissions and prosecuting officers in various parts of the country disclose the fact that in many cases involving women and girls imported into this country, and those transported from one State to another, the procurers resort to all of the means and devices known to the criminal classes to accomplish their purposes. Liquor, trickery, deceit, fraud, and the use of force are resorted to by the procurer to place the girl under his power. In some cases, those who have been induced to come to the large cities are first introduced to the house of prostitution under the influence of liquor; in others, the procurer enters into a pretended marriage with his victim; in many cases involving the importation of women and girls from abroad and their transportation from one State to another the inducement is the promise of legitimate employment with handsome compensation. Hundreds of men in large cities live from the earnings of the victims of the white-slave trade, and in many instances the more extensive of international procurers live in affluence. The books kept by a notorious importer of French girls, who was arrested in Chicago a few months ago, disclosed his earnings for the year previous to his arrest, largely from his importation and wholly from his exploitation of girls, to have been more than $102,000.

The investigations into this subject conclusively show the fact that for some time after they are first unwillingly forced to take up a life of prostitution many of the victims would at once abandon it were it possible for them to do so. The facts are that in order to insure her continuance in the degraded life, to which she has unwillingly been forced to submit, the procurer has resort to physical violence and the maintenance of a system of surveillance which makes her, to all intents and purposes, a prisoner. Obviously the portions of the act which require the proprietor of a house of ill fame to report to the federal authorities concerning the arrival in the establishment of an alien woman or girl would, at least so far as concerns aliens, make unlawful detention practically impossible.

The national and international importance of suppressing this criminal traffic is clearly shown by reference to the treaty, the preamble of which is given above, and reports of governmental officers and others on the subject.

The Secretary of Commerce and Labor, in his annual report for 1908, page 18, refers to the matter in the following terms:

> It is highly necessary that this diabolical traffic, which has attained international proportions, should be dealt with in a manner adequate to compass its suppression. No punishment is too severe to inflict upon the procurers in this vile traffic.

The act of February 20, 1907 (sec. 29), created an immigration commission, the membership of which was to consist of three Senators, three Members of the House of Representatives, and three persons to be appointed by the President of the United States. In a preliminary report submitted February 27, 1909 (Doc. 1489), the commission says:

> The commission has made an extensive investigation into the question of the importation and harboring of women for immoral purposes. The results show that

many women are being regularly imported under conditions which often amount to absolute slavery.

* * * * * * *

It is believed that as a result of this investigation the commission will be able to make recommendations which will put a very decided check upon this horrible traffic, if, indeed, it will not practically break it up entirely.

THE TRAFFIC IS SYSTEMATIC AND EXTENSIVE.

Governmental investigations which have been conducted disclose the fact that the importation of women and girls from foreign countries has been systematic and continuous, and has not been limited to isolated and accidental cases. The facts in connection with investigations conducted by the district attorney at Chicago may be taken as typical of the situation in many other cities.

At the time of the arrest of several notorious French importers in Chicago, a large amount of correspondence and other documentary evidence fell into the hands of the authorities. This evidence showed beyond a reasonable doubt that there was in existence an organized system, or syndicate, having for its purpose the importation of women from foreign countries to Chicago and other cities in the United States for immoral purposes. This syndicate had headquarters and distributing centers in New York, Chicago, Omaha, Denver, San Francisco, Los Angeles, Seattle, and Nome, Alaska.

It is conservatively estimated, from an examination of the data and information at hand, that the syndicate has imported annually during the preceding eight or ten years on an average of about 2,000 women—largely French. It also appears that the syndicate regularly sent agents to Europe to procure girls, at stated prices, to be brought to the United States, where they were placed at the disposal of the keepers of houses of prostitution. The usual method employed in evading the immigration officers at the ports of entry was to pass the women as the wives or sisters of the procurers with whom they arrived.

One of the chief members of this syndicate was the Frenchman Alphonse Dufaur, who was the defendant in six indictments, in the Chicago district, charging him with harboring alien women in violation of the existing law. Dufaur and his wife subsequently forfeited bonds in the sum of $25,000 and became fugitives from justice.

Another active importer and procurer were Henry Lair, who operated establishments in Chicago and San Francisco. One of Lair's agents was a man named Louis Paint, who, some time ago, was convicted of importing in New York, and who is now serving a sentence of four years in the penitentiary at Atlanta, Ga., for importing women for Lair. On the recent trial of Lair, in Chicago, Paint testified that he had been given $800 by Lair and told to go to Paris for the purpose of procuring two girls for Lair's establishment in Chicago. Lair was convicted and sentenced by Judge Landis to serve two years at hard labor in the penitentiary at Fort Leavenworth and to pay a fine of $2,500.

Various arrests have been made in the Chicago district which disclose the existence of a traffic in girls from Hungary, Sweden, Norway, Denmark, Great Britain, and other countries.

In this connection it is of interest to note the profits realized by those engaged in the importation of alien women for the purpose

of prostitution. For this purpose the information in the possession of the Government, as the result of prosecution against the French procurer Dufaur, which is definite and accurate, may be taken as typical of the remunerative character of the traffic. The books of account kept by Dufaur show that his income, from his establishment in Chicago, realized largely as a result of his success as an importer, was, for the twelve months immediately preceding his arrest, upwards of $102,000. These books also show that during the month of May, previous to his arrest, the earnings of one girl, a recent importation, were $723. In almost every instance which has come to the attention of the authorities the girls who were imported from France by the French syndicate were compelled to turn over every day to the proprietor of the establishment in which they were detained all their earnings. They were usually allowed only enough to purchase the clothing necessary to make them attractive to frequenters of the place.

INTERNATIONAL AGREEMENT FOR THE REPRESSION OF THE TRADE IN WHITE WOMEN.

A project of arrangement for the suppression of the white slave traffic was, on July 25, 1902, adopted for submission to their respective governments by the delegates of various powers represented at the Paris conference for the repression of the trade in white women.

The stipulations of this project of arrangements were confirmed by preliminary agreement signed at Paris, May 18, 1904, by the Governments of Germany, Belgium, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and the Swiss Federal Council.

By its resolution of March 1, 1905, the Senate of the United States advised and consented to the adhesion by the United States to the said project of arrangement, and therefore, on June 6, 1908, the President announced the adherence on the part of this Government to the project, and this adherence was on June 15, 1908, covered by the proclamation of the President. This treaty was published in pamphlet form by the State Department as Treaty Series, No. 496, and a complete copy is attached hereto as Appendix B. The preamble of this agreement recites that the various governments, being desirous to assure to women who have attained their majority, and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of trade in white women ("traite des blanches"), have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose.

The terms of the agreement as set forth in the various articles are as follows:

ARTICLE 1. Each of the Contracting Governments agrees to establish or designate an authority who will be directed to centralize all information concerning the procuration of women or girls both in a view to their debauchery in a foreign country; that authority shall have the right to correspond directly with the similar service established in each of the other Contracting States.

ART. 2. Each of the Governments agrees to exercise a supervision for the purpose to find out, particularly in the stations, harbours of embarkation, and on the journey, the conductors of women or girls intended for debauchery. Instructions shall be sent for that purpose to the officials or to any other qualified persons, in order to procure, within the limits of the laws, all information of a nature to discover a criminal traffic.

The arrival of persons appearing evidently to be the authors, the accomplices or the victims of such a traffic will be notified, in each case, either to the authorities of the place of destination or to the interested diplomatic or consular agents, or to any other competent authorities.

ART. 3. The Governments agree to receive, in each case within the limits of the laws, the declarations of women and girls of foreign nationality who surrender themselves to prostitution, with a view to establish their identity and their civil status and to ascertain who has induced them to leave their country. The information received will be communicated to the authorities of the country of origin of the said women or girls, with a view to their eventual return.

The Governments agree, within the limits of the laws and as far as possible, to confide temporarily and with a view to their eventual return, the victims of criminal traffic, when they are without any resources, to some institutions of public or private charity or to private individuals furnishing the necessary guaranties.

The Governments agree also, within the limits of the laws, to return to their country of origin, those women or girls who ask their return or who may be claimed by persons having authority over them. Return will be made only after reaching an understanding as to their identity and nationality, as well as to the place and date of their arrival at the frontiers. Each of the contracting parties will facilitate the transit on his territory.

The correspondence relative to the return will be made, as far as possible, through the direct channel.

ART. 4. In case the woman or girl to be sent back can not pay herself the expenses of her transportation and she has neither husband nor relations nor guardian to pay for her the expenses occasioned by her return, they shall be borne by the country or the territory of which she resides as far as the nearest frontier or port of embarkation in the direction of the country of origin, and by the country of origin for the remainder.

ART. 5. The provisions of the above articles 3 and 4 shall not infringe upon the provisions of special conventions which may exist between the contracting Governments.

ART. 6. The contracting Governments agree, within the limits of the laws, to exercise, as far as possible, a supervision over the bureaus or agencies which occupy themselves with finding places for women or girls in foreign countries.

Articles 7, 8, and 9 provide for the adhesion of the nonsignatory States, that the present arrangement shall take effect six months after the date of the exchange of the ratifications, and for the formalities attending the ratification and exchange of the agreement, respectively.

DOCUMENTS SUBMITTED HEREWITH.

For convenience of reference the following documents are made a part of this report:

Appendix A.—Copy of agreement between the United States and other powers for the repression of the trade in white women.

Appendix B.—Copy of the opinion of the Supreme Court of the United States in the Keller case.

Appendix C.—Copy of dissenting opinion of the Supreme Court of the United States in the Keller case.

Appendix D.—Extract from statement of the Immigration Commission, issued February 27, 1909.

Appendix E.—Extract from annual report of the Secretary of Commerce and Labor, 1908.

Appendix F.—Extract from annual report of the Commissioner-General of Immigration for year ended June 30, 1907.

Appendix G.—Extract from annual report of the Commissioner-General of Immigration for year ended June 30, 1908.

Appendix H.—Letter from United States District Attorney Edwin W. Sims to the Immigration Commission.

Appendix I.—Recommendations of the Immigration Commission in Report of December 10, 1909. (See Senate Document 196, Second session, Sixty-first Congress.)

APPENDIX A.—*Agreement between the United States and other powers for the repression of the trade in white women.*

[Signed at Paris, May 18, 1904. Ratification advised by the Senate March 1, 1905. Adhered to by the President, June 6, 1908. Proclaimed, June 15, 1908.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas a project of arrangement for the suppression of the white slave traffic was, on July 25, 1902, adopted for submission to their respective Governments by the delegates of various Powers represented at the Paris Conference for the repression of the trade in white women;

And whereas, in pursuance of Article VII of the said project of arrangement, the Government of the United States was, on August 18, 1902, invited by the Government of the French Republic to adhere thereto;

And whereas the Senate of the United States, by its Resolution of March 1, 1905 (two-thirds of the Senators present concurring therein), did advise and consent to the adhesion by the United States to the said project of arrangement;

And whereas the stipulations of the said project of arrangement were, word for word, and without change, confirmed by a formal agreement, signed at Paris on May 18, 1904, by the Governments of Germany, Belgium, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and the Swiss

Federal Council, a true copy of which agreement, in the French language, at hereto attached;

And whereas the ratifications by the said Governments of the said agreement have been duly deposited with the Government of the French Republic; and the said agreement has been adhered to by the Governments of Austria-Hungary and Brazil;

And whereas the President of the United States of America, in pursuance of the aforesaid advice and consent of the Senate, did, on the 6th day of June, 1908, declare that the United States adheres to the said agreement in confirmation of the said project of arrangement:

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said agreement to be made public, to the end that the same, and every article and clause thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 15th day of June, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty-second.

[SEAL.] THEODORE ROOSEVELT.

By the President:
ROBERT BACON,
Acting Secretary of State.

THE AGREEMENT.

His Majesty the German Emperor, King of Prussia, in the name of the German Empire; His Majesty the King of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain; the President of the French Republic; His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India; His Majesty the King of Italy; Her Majesty the Queen of the Netherlands; His Majesty the King of Portugal and of the Algarves; His Majesty the Emperor of All the Russias; His Majesty the King of Sweden and Norway, and the Swiss Federal Council, being desirous to assure to women who have attained their majority and are subjected to deception or constraint, as well as minor women and girls, an efficacious protection against the criminal traffic known under the name of trade in white women ("*Traite des Blanches*"), have resolved to conclude an arrangement with a view to concert proper measures to attain this purpose and have appointed as their plenipotentiaries, that is to say:

The President of the French Republic, His Excellency M. th. Delcasse, deputy, minister for foreign affairs of the French Republic;

His Majesty the German Emperor, King of Prussia, His Serene Highness Prince Radolin, his ambassador extraordinary.

His Majesty the King of the Belgians, M. A. Leghait, his envoy extraordinary and minister plenipotentiary to the President of the French Republic;

His Majesty the King of Denmark, Count F. Reventlow, his envoy extraordinary and minister plenipotentiary to the President of the French Republic;

His Majesty the King of Spain, His Excellency M. F. de Leon y Castillo, Marquis del Muni, his ambassador extraordinary and plenipotentiary to the President of the French Republic;

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British dominions beyond the seas, Emperor of India, His Excellency Sir E. Monson, his ambassador extraordinary and plenipotentiary to the President of the French Republic;

His Majesty the King of Italy, His Excellency Count Tornielli Brusati di Vergano, his ambassador extraordinary and plenipotentiary to the President of the French Republic;

Her Majesty the Queen of the Netherlands, M. le Chevalier de Stuers, her envoy extraordinary and minister plenipotentiary to the President of the French Republic;

His Majesty the King of Portugal and of the Algarves, M. T. de Souza-Roza, his envoy extraordinary and minister plenipotentiary to the President of the French Republic;

His Majesty the Emperor of all the Russias, his excellency M. de Nelidow, his ambassador extraordinary and plenipotentiary to the President of the French Republic;

His Majesty the King of Sweden and Norway: for Sweden and for Norway, M. Akerman, his envoy extraordinary and minister plenipotentiary to the President of the French Republic;

And the Swiss Federal Council, M. Charles Edouard Lardy, envoy extraordinary and minister plenipotentiary of the Swiss Confederation to the President of the French Republic;

Who, having exchanged their full powers, found in good and due form, have agreed upon the following provisions:

ARTICLE 1. Each of the contracting Governments agrees to establish or designate an authority who will be directed to centralize all information concerning the procuration of women or girls both in a view to their debauchery in a foreign country; that authority shall have the right to correspond directly with the similar service established in each of the other contracting States.

ART. 2. Each of the Governments agrees to exercise a supervision for the purpose to find out, particularly in the stations, harbours of embarkation, and on the journey, the conductors of women or girls intended for debauchery. Instructions shall be sent for that purpose to the officials or to any other qualified persons, in order to procure, within the limits of the laws, all information of a nature to discover a criminal traffic.

The arrival of persons appearing evidently to be the authors, the accomplices, or the victims of such a traffic will be notified, in each case, either to the authorities of the place of destination or to the interested diplomatic or consular agents, or to any other competent authorities.

ART. 3. The governments agree to receive, in each case, within the limits of the laws, the declarations of women and girls of foreign nationality who surrender themselves to prostitution, with a view to establish their identity and their civil status and to ascertain who has induced them to leave their country. The information received will be communicated to the authorities of the country of origin of the said women or girls, with a view to their eventual return.

The Governments agree, within the limits of the laws and as far as possible, to confide temporarily and with a view to their eventual

return, the victims of criminal traffic, when they are without any resources, to some institutions of public or private charity or to private individuals furnishing the necessary guaranties.

The Governments agree also, within the limits of the laws, to return to their country of origin those of those women or girls who ask their return or who may be claimed by persons having authority over them. Return will be made only after reaching an understanding as to their identity and nationality, as well as to the place and date of their arrival at the frontiers. Each of the Contracting Parties will facilitate the transit on his territory.

The correspondence relative to the return will be made, as far as possible, through the direct channel.

ART. 4. In case the woman or girl to be sent back can not pay herself the expenses of her transportation, and she has neither husband nor relations nor guardian to pay for her the expenses occasioned by her return, they shall be borne by the country on the territory of which she resides as far as the nearest frontier or port of embarkation in the direction of the country of origin, and by the country of origin for the remainder.

ART. 5. The provisions of the above articles 3 and 4 shall not infringe upon the provisions of special conventions which may exist between the contracting governments.

ART. 6. The contracting Governments agree, within the limits of the laws, to exercise, as far as possible, a supervision over the bureaux or agencies which occupy themselves with finding places for women or girls in foreign countries.

ART. 7. The non-signatory States are admitted to adhere to the present arrangement. For this purpose they shall notify their intention, through the diplomatic channel, to the French Government, which shall inform all the contracting States.

ART. 8. The present arrangement shall take effect six months after the date of the exchange of ratifications. In case one of the contracting parties shall denounce it, that denunciation shall take effect only as regards that party and then twelve months only from the date of the day of the said denunciation.

ART. 9. The present arrangement shall be ratified and the ratifications shall be exchanged at Paris as soon as possible.

In faith whereof the respective plenipotentiaries have signed the present agreement and thereunto affixed their seals.

Done at Paris, the 18th May, 1904, in single copy, which shall be deposited in the archives of the Ministry of Foreign Affairs of the French Republic, and of which one copy, certified correct, shall be sent to each contracting party.

APPENDIX B.

IN THE SUPREME COURT OF THE UNITED STATES.

Keller *v.* The United States. (213 U. S. Reports, 138.)

(Decided April 5, 1909.)

Section 3 of the act of Congress of February 20, 1907 (34 Stat. 898, 899), entitled "An act to regulate the immigration of aliens into the United States," reads as follows:

SEC. 3. That the importation into the United States of any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien woman or girl for the purpose of prostitution, or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, or *whoever shall keep, maintain, control, support, or harbor, in any house or other place, for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl, within three years after she shall have entered the United States, shall, in every such case, be deemed guilty of a felony, and on conviction thereof be imprisoned not more than five years and pay a fine of not more than five thousand dollars;* and any alien woman or girl who shall be found an inmate of a house of prostitution, or practicing prostitution, at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States, and shall be deported as provided by sections twenty and twenty-one of this act.

The plaintiffs in error were indicted for a violation of this section, the charge against them being based upon that portion of the section which is in italics, and in terms that they "willfully and knowingly did keep, maintain, control, support, and harbor in their certain house of prostitution" (describing it) "for the purpose of prostitution a certain alien woman, to wit, Irene Bodi," who was, as they well knew, a subject of the King of Hungary, who had entered the United States within three years. A trial was had upon this indictment; the plaintiffs in error were convicted and sentenced to the penitentiary for eighteen months.

Mr. Justice Brewer delivered the opinion of the court.

The single question is one of constitutionality. Has Congress power to punish the offense charged, or is jurisidiction thereover solely with the State? Undoubtedly, as held, "Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regulations to executive officers." (Turner *v.* Williams, 194 U. S., 279, 289. See also Fong Yue Ting *v.* United States, 149 U. S., 698, 708; Head Money Cases, 112 U. S., 580, 591; Lees *v.* United States, 150 U. S., 476, 480; United States *v.* Bitty, 208 U. S., 393.)

It is unnecessary to determine how far Congress may go in legislating with the respect to the conduct of an alien while residing here, for there is no charge against one; nor to prescribe the extent of its power in punishing wrongs done to an alien, for there is neither charge nor proof of any such wrong. So far as the statute or the indictment requires or the testimony shows she was voluntarily living the life of a prostitute, and was only furnished a place by the defendants to follow her degraded life. While the keeping of a house of ill-fame is offensive to the moral sense, yet that fact must not close the eye to the question whether the power to punish therefor is delegated to Congress or is reserved to the State. Jurisdiction over such an offense comes within the accepted definition of the police power. Speaking generally, that power is reserved to the States, for there is in the Constitution no grant thereof to Congress.

In Patterson *v.* Kentucky (97 U. S., 501, 503) is this declaration:

"In the American constitutional system," says Mr. Cooley, "the power to establish the ordinary regulations of police has been left with the individual States, and can not be assumed by the National Government." (Cooley Const. Lim., 574.) While it is confessedly difficult to mark the precise boundaries of that power, or to indicate, by any general rule, the exact limitations which the States must observe in its exer-

cise, the existence of such a power in the States has been uniformly recognized in this court. (Gibbons *v.* Ogden, 9 Wheat., 1; License cases, 5 How., 504; Gilman *v.* Philadelphia, 3 Wall., 713; Henderson et al. *v.* Mayor of the City of New York et al., 92 U. S., 259; Railroad Company *v.* Husen, 95 Id., 465; Beer Company *v.* Massachusetts, supra, p. 25.) It is embraced in what Mr. Chief Justice Marshall in Gibbons *v.* Ogden calls that "immense mass of legislation," which can be most advantageously exercised by the States, and over which the national authorities can not assume supervision or control.

And in Barbier *v.* Connolly (113 U. S., 27, 31) it is said:

But neither the amendment—broad and comprehensive as it is—nor any other amendment was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity.

Further, as the rule of construction, Chief Justice Marshall, speaking for the court in the great case of McCollough *v.* State of Maryland (4 Wheat., 316, 405), declares:

This Government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise, as long as our system shall exist.

In Houston *v.* Moore (5 Wheat., 1, 48) Mr. Justice Story says:

Nor ought any power to be sought, much less to be adjudged, in favor of the United States, unless it be clearly within the reach of its constitutional charter. Sitting here, we are not at liberty to add one jot of power to the National Government beyond what the people have granted by the Constitution.

(Article 10 of Amendments; City of New York *v.* Miln, 11 Pet., 102, 133; License Cases, 5 How., 504, 608, 630; United States *v.* Dewitt, 9 Wall., 41, 44; Patterson *v.* Kentucky, 97 U. S., 501, 503; Barbier *v.* Connolly, 113 U. S., 27, 31; in re Rahrer, 140 U. S., 545, 555; United States *v.* Knight, 156 U. S., 1, 11; Cooley's Constitutional Limitations, 574.)

Doubtless it not infrequently happens that the same act may be referable to the power of the State as well as to that of Congress. If there be collision in such a case, the superior authority of Congress prevails. As said in City of New York *v.* Miln (11 Pet., 102, 137):

From this it appears that whilst a State is acting within the legitimate scope of its power as to the end to be attained, it may use whatsoever means, being appropriate to that end, it may think fit; although they may be the same, or so nearly the same, as scarcely to be distinguishable from those adopted by Congress acting under a different power, subject only, say the court, to this limitation, that in the event of collision the law of the State must yield to the law of Congress. The court must be understood, of course, as meaning that the law of Congress is passed upon a subject within the sphere of its power.

In Gulf, Colorado & Santa Fe Railway *v.* Hafley (158 U. S., 98, 104) the rule is stated in these words:

Generally it may be said in respect to laws of this character that, though resting upon the police power of the State, they must yield whenever Congress, in the exercise of the powers granted to it, legislates upon the precise subject-matter, for that power, like all other reserved powers of the States, is subordinate to those in terms conferred by the Constitution upon the nation. "No urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution." (Henderson *v.* New York, 92 U. S., 259,

271.) "Definitions of the police power must, however, be taken subject to the condition that the State can not, in its exercise, for any purpose whatever, encroach upon the powers of the General Government, or rights granted or secured by the supreme law of the land." (New Orleans Gas Co. *v.* Louisiana Light Co., 115 U. S., 650, 661.) "While it may be a police power in the sense that all provisions for the health, comfort, and security of the citizens are police regulations, and an exercise of the police power, it has been said more than once in this court that, where such powers are so exercised as to come within the domain of federal authority as defined by the Constitution, the latter must prevail." (Morgan *v.* Louisiana, 118 U. S., 455, 468.)

See also Lottery case (188 U. S., 321).

The question is therefore whether there is any authority conferred upon Congress by which this particular portion of the statute can be sustained. By section 2 of Article II of the Constitution, power is given to the President, by and with the advice and consent of the Senate, to make treaties; but there is no suggestion in the record or in the briefs of a treaty with the King of Hungary under which this legislation can be supported.

The general power which exists in the nation to control the coming in or removal of aliens is relied upon, the Government stating in its brief these two propositions:

> The clause in question should be held valid because it relates to and materially affects the conditions upon which an alien female may be permitted to remain in this country, and the grounds which warrant her exclusion.
>
> * * * * * * *
>
> The validity of the provision in question should be determined from its general effect upon the importation and exclusion of aliens.

But it is sufficient to say that the act charged has no significance in either direction.

As to the suggestion that Congress has power to punish one assisting in the importation of a prostitute, it is enough to say that the statute does not include such a charge; the indictment does not make it, and the testimony shows, without any contradiction, that the woman, Irene Bodi, came to this country in November, 1905; that she remained in New York until October, 1907; then came to Chicago and went into the house of prostitution which the defendants purchased in November, 1907, finding the woman then in the house; that she had been in the business of a prostitute only about ten or eleven months prior to the trial of the case in October, 1908, and that the defendants did not know her until November, 1907. In view of these facts the question of the power of Congress to punish those who assist in the importation of a prostitute is entirely immaterial.

The act charged is only one included in the great mass of personal dealings with aliens. It is her own character and conduct which determines the question of exclusion or removal. The acts of others may be evidence of her business and character. But it does not follow that Congress has the power to punish those whose acts furnish evidence from which the Government may determine the question of her expulsion. Every possible dealing of any citizen with the alien may have more or less induced her coming. But can it be within the power of Congress to control all the dealings of our citizens with resident aliens? If that be possible, the door is open to the assumption by the National Government of an almost unlimited body of legislation. By the census of 1900 the population of the United States between the oceans was, in round numbers, 76,000,000. Of these

10,000,000 were of foreign birth, and 16,000,000 more were of foreign parentage. Doubtless some have become citizens by naturalization, but certainly scattered through the country there are millions of aliens. If the contention of the Government be sound, whatever may have been done in the past, however little this field of legislation may have been entered upon, the power of Congress is broad enough to take cognizance of all dealings of citizens with aliens. That there is a moral consideration in the special facts of this case, that the act charged is within the scope of the police power, is immaterial, for, as stated, there is in the Constitution no grant to Congress of the police power. And the legislation must stand or fall according to the determination of the question of the power of Congress to control generally dealings of citizens with aliens.

In other words, an immense body of legislation, which heretofore has been recognized as peculiarly within the jurisdiction of the States, may be taken by Congress away from them. Although Congress has not largely entered into this field of legislation, it may do so, if it has the power. Then we should be brought face to face with such a change in the internal conditions of this country as was never dreamed of by the framers of the Constitution. While the acts of Congress are to be liberally construed in order to enable it to carry into effect the powers conferred, it is equally true that prohibitions and limitations upon those powers should also be fairly and reasonably enforced. Fairbank *v.* United States (181 U. S., 283). To exaggerate in the one direction and restrict in the other will tend to substitute one consolidated government for the present Federal system. We should never forget the declaration in Texas *v.* White (7 Wall., 700,725), that "The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."

The judgments are reversed, and the cases remanded to the district court of the United States for the northern district of Illinois with instructions to quash the indictment.

Appendix C.

DISSENTING OPINION IN KELLER CASE.

Mr. Justice Holmes, dissenting.

For the purpose of excluding those who unlawfully enter this country Congress has power to retain control over aliens long enough to make sure of the facts. (Yamataya *v.* Fisher (*Japanese Immigrant Case*), 189 U. S., 86.) To this end it may make their admission conditional for three years. (Pearson *v.* Williams, 202 U. S., 281.) If the ground of exclusion is their calling, practice of it within a short time after arrival is or may be made evidence of what it was when they came in. Such retrospective presumptions are not always contrary to experience or unknown to the law. (Bailey *v.* Alabama, 211 U. S., 452, 454.) If a woman were found living in a house of prostitution within a week of her arrival, no one, I suppose, would doubt that it tended to show that she was in the business when she arrived. But how far back such an inference shall reach is a question of degree like most of the questions of life. And

while a period of three years seems to be long, I am not prepared to say, against the judgment of Congress, that it is too long.

The statute does not state the legal theory upon which it was enacted. If the ground is that which I have suggested, it is fair to observe that the presumption that it creates is not open to rebuttal. I should be prepared to accept even that, however, in view of the difficulty of proof in such cases. Statutes of which the justification must be the same are familiar in the States. For instance, one creating the offense of being present when gaming implements are found (Commonwealth *v.* Smith, 166 Mass., 370, 375, 376), or punishing the sale of intoxicating liquors without regard to knowledge of their intoxicating quality (Commonwealth *v.* Hallett, 103 Mass., 452), or throwing upon a seducer the risk of the woman turning out to be married or under a certain age. (Commonwealth *v.* Elwell, 2 Met., 190. Reg. *v.* Prince, L. R. 2 C. C., 154.)

It is true that in such instances the legislature has power to change the substantive law of crimes, and it has been thought that when it is said to create a conclusive presumption as to a really disputable fact, the proper mode of stating what it does, at least as a general rule, is to say that it has changed the substantive law. (2 Wigmore, Ev. secs. 1353 et seq.) This may be admitted without denying that considerations of evidence are what lead to the change. And if it should be thought more philosophical to express this law in substantive terms, I think that Congress may require, as a condition of the right to remain, good behavior for a certain time in matters deemed by it important to the public welfare and of a kind that indicates a preexisting habit that would have excluded the party if it had been known. Therefore I am of opinion that it is within the power of Congress to order the deportation of a woman found practicing prostitution within three years.

If Congress can forbid the entry and order the subsequent deportation of professional prostitutes it can punish those who cooperate in their fraudulent entry. "If Congress has power to exclude such laborers * * * it has the power to punish any who assist in their introduction." That was a point decided in Lees *v.* United States (150 U. S., 476, 480). The same power must exist as to cooperation in an equally unlawful stay. The indictment sets forth the facts that constitute such cooperation and need not allege the conclusion of law. On the principle of the cases last cited, in order to make its prohibition effective, the law can throw the burden of finding out the fact and date of a prostitute's arrival from another country upon those who harbor her for a purpose that presumably they know in any event to be contrary to law. Therefore, while I have admitted that the time fixed seems to me to be long, I can see no other constitutional objection to the act, and, as I have said, I think that that one ought not to prevail.

Mr. Justice Harlan and Mr. Justice Moody concur in this dissent.

APPENDIX D.—*Importation for immoral purposes.*

[Extract from statement relative to the work and expenditures of the Immigration Commission, issued February 27, 1909, as Document No. 1489.]

The commission has made an extensive investigation into the question of the importation and harboring of women for immoral purposes. The results show that many women are being regularly

siderable. But the bureau is satisfied, from the experience of its field officers, that much still remains to be done. The number of foreign prostitutes and procurers or importers of prostitutes being detected and deported (see Table III A, p. 12) furnishes incontrovertible evidence on this point. Some especially good work has been done in several of the Western States, notably Montana. In this respect, also, the new immigration act (secs. 2 and 3) is a decided improvement over the old, and places in the hands of the bureau a weapon with which it hopes to make an energetic and effective fight. The bureau believes that this provision for the cure of existing evils should be supplemented by a preventive measure which it here suggests: A number of thoroughly qualified women, equipped with a sufficient knowledge of foreign languages, should be selected and appointed for service on the vessels of several of the larger steamship lines, their duty being to travel from foreign ports on the vessels with the alien women, mixing freely with them, forming their acquaintance, and gathering every available bit of information concerning their antecedents and their purposes and hopes in coming to America. Thus could be gained, it is believed, often accurately and in detail, data which could be placed before boards of special inquiry upon arrival at the United States ports, enabling such boards to pass intelligently upon the admissibility of the alien women.

Of course, the greatest care would have to be exercised in selecting women for positions of such responsibility. Doubtless the steamship lines would consent to such an arrangement, and the cost involved would be inconsiderable as against the importance of the object in view. Little or nothing, comparatively, can be accomplished by an inspection of, and intermixture with, the female steerage passengers after the vessels reach quarantine stations on our coasts—the period from that time till landing is too limited—but under the arrangement suggested the time would be ample for women possessing the requisite qualifications of mind, heart, and temperament to ascertain much of interest regarding the passengers among whom they would mingle.

APPENDIX G.

[Extract from Annual Report of the Commissioner-General of Immigration for the fiscal year ended June 30, 1908.]

Reference to Tables III and IIIA will show that during the past year there has been great activity on the part of the bureau in the suppression of the importation of alien women for purposes of prostitution or "other immoral purposes." The first table shows that of prostitutes and women coming for other immoral purposes 124 have been rejected at the ports, and of procurers of prostitutes 43. Table IIIA shows that 44 alien prostitutes and 2 procurers have been deported from the country, and the bureau's files show that 14 procurers and keepers of houses of ill fame have been convicted and sentenced to terms of imprisonment and fines, the sentence in 4 cases being imprisonment for from one to five years and in the remaining 10 both imprisonment and fine, ranging from six months to eighteen months and from $50 to $1,000. The law now in force is a great improvement over former immigration laws, both in its provisions with respect to the exclusion and expulsion of immoral alien women and in the penalties it attaches to importing or har-

boring alien prostitutes or alien women similarly immoral, or placing in houses of ill fame alien women who have entered this country with the intent to lead lives of virtue. Not only is the law, by the terms in which enacted, made much broader than heretofore, but, fortunately, the first case brought in the courts to test its scope was carried up to the Supreme Court, and a decision sustaining the Government's contention for a construction of the broadest possible kind has been handed down. Reference is had to the case of United States *v.* John Bitty (208 U. S., 393), in which the Supreme Court held that a foreign woman being brought to the United States as the personal, private mistress of a man living here was being imported "for other immoral purposes," and that therefore the importer was subject to the penalty of the statute and the woman to deportation.

Early in the year a circular of special instructions with respect to the arrest and deportation of immoral alien women was issued, and a systematic campaign having that object in view has been inaugurated. Already, as shown by the figures given, good results are being attained, and it is confidently expected that much more will be accomplished hereafter. One of the greatest difficulties encountered is the fact that most women brought into this country as "white slaves" are carefully instructed by their masters to make no damaging admissions with regard to the date of their arrival or the name under which the ocean passage was booked, and to claim always that the date of arrival was more than three years previously, three years being the limit of time fixed in the law within which deportation may be effected. To partly overcome this plan to block ascertainment of the actual date of arrival of such persons and disprove their fictitious claims, the department felt justified in holding that, if an immoral woman refuses to furnish the correct date of arrival and the name under which she traveled, it will be assumed for administrative purposes that she arrived within the three-year period, and unless she disproves such presumption of fact deportation will follow. This is having a good effect. What will do more than anything else to break up the nefarious barter in humanity will be securing, in the large centers particularly, a few such sentences in the cases of the procurers as that given David Rokoff by District Judge Morris, of Baltimore. Rokoff was shown to be an outrageous violator of the law regarding procuring and holding alien women to prostitution, and the judge, promptly upon the return of a verdict of guilty, pronounced a sentence of five years' imprisonment in the penitentiary.

Several of the immigration officials who were detailed abroad during the year reported that the white-slave traffic was flourishing between European and North and South American countries, and that it was a matter of regret that the United States had not yet become a party to the agreement between the leading European countries for cooperation in the breaking up of the traffic. On June 6, 1908, however, the President, on behalf of the United States, proclaimed said agreement, the text of which is as follows, the countries signatory being Great Britain, France, Germany, Belgium, Denmark, Spain, Italy, the Netherlands, Portugal, Russia, Sweden, Norway, and Switzerland.

See also Senate Document 196, second session, Sixty-first Congress, being a report from the Immigration Commission on the importation and harboring of women for immoral purposes, presented December 10, 1909.

APPENDIX H.—*Letter from United States District Attorney Edwin W. Sims to the Immigration Commission.*

DEPARTMENT OF JUSTICE,
OFFICE OF UNITED STATES ATTORNEY,
NORTHERN DISTRICT OF ILLINOIS,
826–833 Federal Building, Chicago, February 3, 1909.

In compliance with the suggestion that I furnish you with a statement of the work done by the United States attorney's office at Chicago in connection with the prosecution of violations of section 3 of the act of July 1, 1907—the so-called "white-slave law"—I have the honor to state:

Reports of numerous violations of this law were first made to this office early in 1908 by slum workers and the members of charitable and humane organizations which labor in the red-light districts. As a result of preliminary investigations which I caused to be made, I reached the conclusion that the law was being violated on an extensive scale. Accordingly, in May, warrants were sworn out for the arrest of eight or ten keepers, charging them with the detention of alien girls. Notwithstanding the fact that this office exercised every precaution to keep the proposed arrests secret, the matter in some way leaked out, and when the deputy United States marshals went to the Twenty-second street district to make the arrests, all of the parties wanted had mysteriously disappeared. After making some ineffectual attempts to locate these parties, I reached the conclusion that without some specially trained force it would be practically impossible, with the regular force of the office, to secure successful results.

It was at this stage of the proceedings that you called at the office and advised me that you were in a position to turn over to me information which had been collected by the agents of the Immigration Commission, and also that the agents of the commission, who were at that time collecting data and information in this district, would turn the same over to us to aid us in the prosecutions. I found that the information which had been collected by the agents of the commission was exactly what we wanted, and acting on it a few days later we made several raids, which resulted in a large number of arrests. Since that time, largely as a result of the information which has been furnished us by the agents of the commission, we have made other arrests and have prosecuted a number of cases to a successful conclusion.

From what I know of the situation I am convinced that the prosecutions have had a most salutary effect, at least in this district. Of a large number of persons who a few months ago were actively engaged in the importation of alien women and girls for immoral purposes, some are serving sentences of imprisonment, others have forfeited bail and fled, and reliable information which comes to me is to the effect that no inconsiderable number have become so frightened at the prosecutions that they have abandoned their practices, left the city, and gone into other business.

It is also clear that the prosecutions have resulted in greatly reducing the number of alien women harbored in the establishments in the Chicago red-light districts. Information in my possession is to the effect that a considerable number of them have returned to the country whence they came, while others have gone to other States in the United States.

I think I may safely say that the prosecutions we have conducted have resulted in effectually breaking up the traffic in alien girls, at least in this district and for the time being. I have been informed by those who are in position to know that as the result of the prosecutions instituted the value of the establishments in the Chicago red-light districts have depreciated 50 per cent. In addition to a number of establishments which have been closed a considerable number have changed hands. These transfers show that the consideration was much less than the going price of such concerns one year ago.

In this connection I want to express to you my appreciation of the assistance which has been furnished by the Immigration Commission. The information and data furnished us and the assistance given to us by the special agents of the commission were invaluable. The cooperation of the commission made possible the institution and successful prosecution of many of the cases brought in this district. I have always felt that without the aid which the commission was able to give us it would have been impossible for us to have accomplished what has been done.

The cases instituted in this district and the results to date in each case are as follows:

Alphonse and Eva Dufaur; six indictments for harboring six alien women; bail fixed at $25,000; bail forfeited; defendants supposed to have fled to France; place of business in this city abandoned. Our information is to the effect that owing to sacrifices in the disposition of their property, made necessary by their hurried departure, the Dufaurs were put to an expense, including the forfeited bail, of about $80,000. The Dufaurs are supposed to have been among the leading French importers in the United States.

August Duval and Marie Duval were the proprietors of a French restaurant and hotel which was supposed to have been used as a rendezvous for French importers and alien women brought to this country; fined $1,000 and $100 and costs, respectively, on plea of guilty to conspiracy. They have closed up their hotel, disposed of their property, and, I am advised, have returned to France.

Fernand Bocquet, indicted for harboring with the Dufaurs and Duvals; fined $100 and costs.

Henry Lair, indicted for importation and harboring; found guilty on a plea of nolo contendere; sentenced to two years in the penitentiary at Fort Leavenworth and to pay a fine of $2,500. The testimony in the Lair case showed that, in addition to having an agent permanently stationed in Paris, he, each year, sent agents abroad for the purpose of procuring girls. He had establishments in Chicago and San Francisco, making his headquarters at the latter place. The girls who were imported as a result of his activities were distributed at various points in the United States from New York and San Francisco.

Lucienne D'Arville (Mrs. Harry Lair), indicted as an accomplice of Lair; fined $100 on plea of guilty.

Joseph Oschner, indicted for harboring German girl; tried, convicted, and sentenced to two and a half years in the Leavenworth Penitentiary and to pay a fine of $2,500.

Joseph Keller, indicted for harboring Hungarian girls; tried, convicted, and sentenced to eighteen months at Fort Leavenworth Penitentiary and to pay costs.

Louis Ullman, indicted for harboring Hungarian girls; tried, convicted, and sentenced to eighteen months at Fort Leavenworth Penitentiary and to pay costs.

B. H. Markel, alias Barney Markel, in business with Keller and Ullman; evaded arrest and fled. We are advised that he is now in South Africa. The proceedings against Keller, Ullman, and Markel resulted in the closing up of two establishments in the South Chicago districts.

Joseph Bolar, indicted for harboring Hungarian girls; sentenced to thirty days in the house of correction on a plea of guilty. As a result of Bolar's conviction, the place previously operated by him at South Chicago has been closed. Others who were in business with Bolar evaded arrest and fled.

Sol Rubin, indicted for harboring Canadian girl; tried, convicted, and sentenced to nine months in the house of correction and fined $25.

Louis Rosenblum, indicted with Rubin for harboring Canadian girl; fined $400 and sentenced to the house of correction for one day on a plea of guilty.

Matilda Stern, indicted for harboring a French-Canadian girl; tried, convicted, and sentenced to sixty days in the house of correction and to pay a fine of $250.

Joseph Michel, alias "Michel, the Mysterious;" sentenced to two weeks in the house of correction, and fined $2,000 and costs on a plea of guilty to an indictment charging him with harboring French girls. The establishment operated by Michel and his wife was closed up and Michel has gone east and entered legitimate business.

Mariette Michel, indicted in connection with Joseph Michel; sentenced to two days in the house of correction and fined $500 on a plea of guilty.

Andrew Wiborg, tried and convicted for harboring a Danish girl; sentenced to forty-one days in the Cook County jail. The establishment operated by him closed as the result of his conviction.

Barney Rubin, fined $200 on a plea of guilty charging him with harboring Hungarian girl.

Morris Rothstein, fined $200 on a plea of guilty charging him with harboring Hungarian girls.

Rosie Baum, sentenced to ten days in the Cook County jail on a plea of guilty to indictment charging her with harboring Hungarian girl. The establishment operated by her was closed as the result of her conviction.

Isaac Cooperman, tried and convicted of harboring a Canadian girl. Served six months in the county jail.

Isaac Aronson, sentenced to sixty days in the house of correction on a plea of guilty.

Rosie Markel, sentenced to one week in the house of correction and fined $200 and costs on plea of guilty.

Victor Malezan, indicted for harboring Bohemian girl; case not yet tried.

There are also pending in the district three indictments against parties for harboring, who have evaded service.

At the time of the imposition of most of the sentences shown above, the court took into consideration the fact that in many instances the defendant had already spent five or six months in jail in default of bail.

Very truly, yours, EDWIN W. SIMS,
United States Attorney.

APPENDIX I.—*Recommendations of the Immigration Commission in report of December 10, 1909.*

(See Senate Document 196, second session, Sixty-first Congress.)

The commission recommends that the following changes be made in the immigration laws:

1. That section 3 of the immigration act of February 20, 1907, be amended by removing the limitation of three years after the date of landing within which the prostitute or procurer must be found.

Comment.—The evils of the traffic are ordinarily not lessened with the length of time the criminal or prostitute remains in the country.

2. All persons violating the act who have been debarred or deported, if they later return to and attempt to enter the United States, should be declared guilty of misdemeanor and should be punished by imprisonment for not more than two years, and at the expiration of such term be deported.

Comment.—Under our present regulations deported prostitutes return frequently and make further efforts to enter the country, often continuing until they succeed. A penalty would probably prevent these attempts in many cases. The reentry of women once deported is apparently an easy matter. Many of them return again through the port of New York, and some enter by way of Boston, New Orleans, and Quebec. The deportation of a woman is by no means a safeguard against her returning. Many deliberately state that they will return. One prostitute has been deported several times upon information given by a man who several years ago imported her, and to whom she had become a nuisance rather than a source of income. Very frequently the fact that the girl is a prostitute is made known by some man who wishes to be rid of her. Within the month of December, 1908, a French importer, living in San Francisco, offered $500 to anyone who would bring about the deportation of a girl that he had imported two years previous, because he heard that she had intended to testify against him. Another man, whose girl had been sent to the workhouse for six months, stated to one of the agents of the commission that he intended to have her deported at once so that she would be freed of her imprisonment and enabled to return to ply her trade in a much shorter time than if she were allowed to serve her sentence. Not long ago a young girl who had been converted to the Mormon faith landed at Boston. Having admitted that she believed in polygamy, she was immediately deported and a few weeks later was found in Salt Lake City, having entered by way of Canada.

3. The penalties of perjury should be inflicted upon those taking false oath regarding the circumstances connected with these crimes.

Comment.—It is understood that under some of our laws, e. g., the Chinese exclusion act and immigration act, the penalty of perjury is not imposed for taking a false oath. Clearly, if perjury is to be recognized and punished as a crime, it should be recognized and the penalty imposed in these circumstances.

4. The burden of proof regarding the date and place of landing should be placed upon the alien, if those facts are needed.

Comment.—Under the regulations of the Bureau of Immigration, under ordinary circumstances, the burden of proof has rested upon the bureau to prove the date and place of landing. Generally speaking, no hardship would be imposed upon the criminals or prostitutes in question if they were compelled to state the time and place of landing, although under the law as amended this will generally not be necessary. The present rule in many cases defeats absolutely the purpose of the law. The new ruling would very seldom, if ever, be any hardship to any innocent person.

5. The keeping or management of any house of prostitution by an alien, or the taking of all or part of the earnings of any prostitute, should be sufficient cause for deportation of such alien.

Comment.—While the regulations regarding prostitution are ordinarily matters of state legislation, it would seem entirely fitting for the Federal Government to forbid to aliens certain acts injurious to the country under penalty of deportation if they were committed. This seems a case in point.

6. Steamship companies should be required to take back from whence they came all debarred or deported passengers in the same class of passage in which they came to this country.

Comment.—Under present circumstances it will often pay a steamship company financially to take the risk of bringing over a criminal or prostitute first or second class, taking the risk of their deportation, since if they can be returned to their own country at steerage rates a profit will be made. This possibility of securing a profit from criminals and prostitutes who are deported should be removed.

7. Cases should be prosecuted in the district where evidence is most readily secured.

8. The legislatures of the various States should be asked to enact laws requiring the detention of every alien woman convicted under the state laws of practicing prostitution, and further providing for the notification of the Department of Commerce and Labor of such cases, in order that immediate steps may be taken for the deportation of such women.

Comment.—The difficulty of locating a girl convicted of prostitution when she has been discharged, paroled, or fined suggests the advisability of this enactment.

9. The transportation of persons from any State, Territory, or District to another for the purposes of prostitution should be forbidden under heavy penalties.

10. The legislatures of the several States should consider the advisability of enacting more stringent laws regarding prostitution. It is suggested that the Illinois statute regarding pandering be carefully considered.

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